

Marriage Privatization: What, Why, and most importantly, How

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This book does not constitute legal advice.

While every effort has been made to ensure accuracy, there are no guarantees that the facts presented are up-to-date and accurate in each and every instance.

Chapter 1

What is Marriage Privatization

Privatization generally means removing something from government hands, and placing it in private control. Marriage privatization simply means removing control of the institution of marriage from government hands. As a result, the idea of marriage will be controlled by private entities, including churches, community groups, families and individuals. Also, like many other things after privatization, marriage will no longer be controlled by a monopoly (the government), but will instead be defined and constituted differently among the private entities that help to uphold it. Couples will have a choice as to which model(s) of marriage they wish to subscribe to, making the decision with their own values and moral compass.

Marriage privatization was widely discussed in the late 1990s as a solution to the conflict regarding same-sex marriage. Over the past two decades, many people have come to a realisation that this is perhaps the best solution to the marriage equality problem. But, especially more recently, many others have recognised that marriage privatization holds benefits much further than resolving a contentious debate about definition. In a society as diverse as the modern West, it is in fact quite inconvenient that marriage is often held to be a one-size-fits-all solution, centrally governed by a piece of law that the government can change at any time. Besides the disagreement about same-sex marriage, couples across society are actually disagreeing on issues much closer to the heart of what marriage is, like how the commitment should be defined, or if exit is to be allowed, and what rules should apply for exit if allowed. Many have been concerned that marriage has become the lowest common denominator of

everyone's expectations, as a result. Solutions to this problem, like the provision of covenant marriage as an option, have been proposed and actually enacted in several jurisdictions, but their low rate of uptake demonstrates the limits to this approach. Sometimes the disagreements are more practical, for example regarding if the rules of communal property should apply, especially in this day and age where most women work. Currently couples often don't have a say in this, and instead have to accept the rules of their state. Many feel that this is incompatible with our modern, liberal ethos.

The fact that marriage privatization was not widely discussed until the marriage equality debate is not surprising. Throughout history, people have been used to being ruled over by elites, and have accepted their place in life to obey those rulers. It was really not until recent decades that the idea of everyone having equal moral agency began to widely take hold.

Disagreements about the meaning of marriage also became more common since the middle of the 20th century, especially after the enactment of no-fault divorce. Such disagreements have caused a lot of unsettled feeling in society, hence the proposals ranging from abolishing marriage from our culture altogether, to ending 'unilateral divorce', to the provision of covenant marriage, for example. But even then everyone seemed to be committed to continuing a one-size-fits-all model, instead fighting over what that model should look like. It really took the question of same-sex couples, an unavoidable and clear-cut incompatibility in definition, to make people wake up to the fact that maybe we just don't need a one-size-fits-all definition of marriage anymore. Once this barrier was crossed, however, the benefits to marriage privatization became clearer and clearer to more people each year.

Among marriage privatization supporters, there are currently two main models proposed. One is where marriage licences and certificates would simply be renamed civil unions, with all the rules and benefits remaining in place. Couples would then be able to celebrate their marriage in a religious or secular ceremony, and/or take out a civil union to obtain government recognition, without necessarily having to do both if they do not wish to. The government would not hold any definition of marriage in law at all, and all existing laws referring to marriage will instead refer to civil unions. This model creates the most minimal amount of change, and politically looks easier to achieve. However, other marriage privatization supporters contend that true privatization and freedom only comes with allowing each couple to write their own marriage contract from scratch. The problem with this model is that the legal advice required to create such contracts may be prohibitive for many couples, and private contracts may not be

able to attract government recognition in the same way standard civil unions can. Therefore, it looks almost impossible to achieve politically. The method used to achieve marriage privatization in this book will in fact result in a hybrid model that has the benefits of both models, allowing couples the maximum flexibility to choose one or the other, or something in between.

Chapter 2

The Cultural Case for Marriage Privatization

The best case for marriage privatization is also the ultimate conservative case: governments were not involved in marriage in the first place, so to get them out would be to do an ultimate rewind, back to before the 1700s in fact. Another argument would be that letting the government have authority to solemnise marriages places the government in a God-like position over couples and families, and the fact that authoritarian states have sought to limit marriage to achieve social engineering goals further highlights the dangers of this. Some people may dismiss all this as theoretical, but I believe these are important arguments because they go to the very nature of how our society is ordered.

But there is also a very practical cultural case for marriage privatization.

As mentioned previously, the core reason for marriage privatization is to let couples live their own definition of marriage, bound to their own values and moral compass. In this diverse modern world, a one-size-fits-all approach has made marriage into the lowest common denominator of everyone's views, as is necessarily the case in many other situations where a common definition has to apply across a diverse population. The fact that almost all calls for reforming the rules of marriage in recent years have come from those who want tighter rules one way or another is evidence of this. (The marriage equality movement is a special exception from this rule, but it is about including a new category of couples, and does not either tighten or loosen the rules for marriage itself.) When you think about it, the current common perception of marriage is

already so relaxed that those who want an even more relaxed arrangement (remember, this means even more relaxed than those Hollywood 'mini-marriages') are very unlikely to want anything to do with the idea of marriage.

Many couples are in fact unhappy with their marriage being governed by such relaxed rules. To these couples, marriage is a commitment to a shared life until death, and they are unhappy that this is not reflected in the legal and cultural expectations of their union. Hence the idea of covenant marriage, where couples can choose to obtain a special marriage licence that provides for more limited grounds of divorce, was born. However, to date, where covenant marriage has been enacted, its uptake rate has been very low. Clearly, where covenant marriage is provided as an option, the vast majority of couples still choose regular marriage, with the provision of no-fault divorce. Remember, these are generally conservative

states in the US deep south. While many have blamed no-fault divorce for the loosened cultural rules around marriage, the experiment of covenant marriage has clearly demonstrated that there is actually no alternative to having no-fault divorce, at least legally.

In fact, while many conservatives pine for the days before no-fault divorce, there's no feasible way to turn back the clock. The reason why no-fault was enacted was because fault-based divorce became untenable. The old system required the courts to interpret a couple's personal lives, hold the evidence up to scrutiny, and hence make a legal judgement. Unlike in regular court cases, courts were often asked to make judgements based on incomplete and biased information, with no neutral eyewitness to verify the claims of either party. The use of private investigators to collect evidence even became common practice by the 1960s, towards the collapse of this system. As you can

see, there is clear potential for unfairness in such a system. When women did not have the vote, the system would be sustainable because like every part of society the courts would generally favour men. Furthermore, before World War II, there was less expectation of absolute fairness and justice in the community generally. But by the 1960s, when movements for fairness and civil rights became the order of the day, and women began to demand and expect equality in society, fault-based divorce became unsustainable. Today, even religious couples in the US deep south overwhelmingly reject taking out a marriage with fault-based rules for exit.

But this still doesn't mean that couples are willing to just live in the same kind of 'marriage' as the Hollywood mini-marriage. It's just that while they may be attracted to a more committed state of union, they do not want the courts to be the final arbitrator with potential

for injustice in the unlikely case of divorce. No matter how unlikely they think divorce is, many couples do not even want to consider taking that risk.

With marriage privatization, couples can have more choices. For example, they can declare their deeper commitment in front of their friends and relatives, and sign a non-legal certificate setting out the expectations of their marriage, to be witnessed by close friends and relatives who promise to hold them to account, all without altering the provision of no-fault divorce being available should they be so unlucky as to require it. They can also sign a contract with certain provisions regarding exit if they wish to, and can choose a method of arbitration other than by the courts using traditional fault-grounds.

Chapter 3

The Pragmatic Case for Marriage Privatization

For a long time in human history, people within a given society usually lived in a very homogenous way. In most societies, men were the sole breadwinner and women stayed at home in the vast majority of families.

Therefore, the financial regime governing marriage was built around this kind of family. Concepts like communal property were geared towards protecting the incomeless women, in return for their years of domestic service.

But we don't live in this world anymore. Most women work today, and have a full-time job and the income that comes with it. They are no longer dependent on men financially. In this world, some couples feel like each person should be able to keep what they earn, going as far as to describe communal property as

enforced communism. Reasons why couples would like to keep their money separate include a strong belief in individual incentive and reward, as well as the belief that this would make the relationship less complicated, and remove a potential stressor that could strain the relationship.

Many couples who don't like the financial regime surrounding marriage have opted out of marriage altogether, and have chosen to cohabitate informally. However, from a cultural perspective, they may be missing out on the benefits coming from the cultural expectations of marriage, which may help foster commitment. Therefore, the current system is actually unjust, from this point of view.

In a cultural and legal paradigm where marriage is privatized, couples can simply choose to be

married without opting into the communal property system if they do not believe in it.

Chapter 4

Answering Criticism of Marriage Privatization

Although marriage privatization clearly has many benefits, there have been plenty of sceptics who say the system will be unworkable. Similar to other marriage privatization supporters, clearly I do not believe this to be the case. However, as many marriage privatization supporters are theoretical libertarianism inclined, they have mostly made their case on hypothetical grounds, and have not been able to convince critics to change their mind generally. In this chapter, I will demonstrate why marriage privatization is practically achievable and workable, using practical arguments and examples.

The number one criticism of marriage privatization is that there would be chaos in society if the government is removed from the regulation of family law. Current marriage and family laws provide for the legal bond between parents and their children, the presumption of paternity within marriage, as well as a clear mechanism to deal with the custody and support of children in the case of divorce. This is unlikely to be efficiently replicated in a solely contract-based system. Even in the civil union based model, those who opt out of government civil unions will face these problems.

This view actually arises from a marriage-centric view of family law. In fact, the benefits and responsibilities the law imposes on couples with children can be extended to all cohabiting couples with children, rather than just married couples. This is already the case in countries like Australia, and the sky hasn't fallen down as a result. In Chapter 7, I will argue for such

reform as part of the how to achieve marriage privatization. I will demonstrate why this reform is actually also beneficial from a social justice point of view, as it 'leaves no child behind'. Once the family law provisions regarding married couples is extended to all cohabiting couples, there is no reason why the aforementioned chaos will occur in any case at all. Therefore, this is simply not a valid argument against marriage privatization.

There are also critics who have been concerned that marriage privatization will open the door to polygamous marriages. However, this is not based in firm logic. Polygamy already exists, even though such groups cannot obtain government recognition. They also sometimes consider themselves to be married privately. Furthermore, like any other group of people, polygamists can set up financial contracts if they wish to. But the fact remains that most other people just don't consider theirs a valid

marriage morally, and as a result there have been no popular movement to get government to recognise their relationships. This stands in stark contrast to the marriage equality movement, where a substantial proportion of the population feel passionate enough about the exclusion of gay couples to campaign hard for their inclusion. Clearly, even though anyone can privately consider their relationship a marriage (even in the status quo), it doesn't mean the rest of society will see it this way too. As long as society generally sees the non-recognition of polygamous relationships as justified, government policy will follow suit, while polygamists will continue to be afforded their liberty as per the status quo and nothing more, even under marriage privatization. Remember, marriage privatization will not create an obligation for anyone to recognise any other's relationship as a valid marriage just because they say so!

In fact, as long as the government has a one-size-fits-all definition of marriage, there is indeed a risk that polygamists will be able to claim that the government is excluding them. On the other hand, the legal reforms described in Chapter 7 will change laws to instead apply to 'couple relationships', something polygamous groups clearly do not qualify for. If anything, it will provide an extra barrier to the recognition of polygamy.

Some progressives contend that if marriage is not centrally controlled by the government it will be less responsive to changes in public values. For example, they say that if governments could not enforce gender equality within marriage women would still be living in unequal marriages, or that the role of government in enforcing a gay-inclusive definition of marriage is necessarily for true equality. I think this presupposes a very authoritarian (as opposed to liberal) kind of

progressivism, and a pessimistic view of humanity. When you think about it, if there was never government regulation of marriage to begin with, would gender equality never have arrived in marriage as a result? Wouldn't the general ethos of women's rights have affected marriage, whether government controlled or not? I think a similar thing would have happened to gay marriage too. Many people already accept gay marriages, even where the government has not caught up yet, and I am optimistic that given time its acceptance will become near universal, even without any government intervention. In fact, governments have lagged substantially behind the people on this issue in some countries, most notably in parts of Europe and in Australia.

Some other critics are concerned that, without government regulation, marriage will lose its meaning and significance as a public institution. But then, think about this. In the liberal West,

religion has not been regulated by government laws for a long time now. Has religion lost its meaning and public significance? In fact, not only has religion not lost its importance as a result of being private, it has been able to much better maintain its values through the past five decades of social and political upheaval, compared to marriage. Whatever religion one is talking about, religious values nowadays don't differ much from religious values in the 1950s, but the societal view of marriage surely differs quite a lot from the 1950s view! In fact, if you ask the most devoutly religious people if they would like the government to start defining and regulating their religion, they will predictably strongly say no, partially out of fear that the government will then have the power to change their religion at the stroke of a pen, towards whichever way the political winds are blowing, or even as part of political deals done to further other agenda. Marriage is not that different here. In fact, it has already suffered from the shifting political winds many times

throughout history (and I'm saying this even as a supporter of marriage equality). It is clear that government regulation is part of the reason why marriage is losing its meaning, not part of the solution. Without government regulation, marriage will still continue to have a public meaning, a society-wide consensus that will emerge from the commonalities among the range of different definitions people hold privately. It's just that this meaning will be the true product of society-wide consensus rather than political meddling.

A related concern is that marriage is good for children and good for society, and therefore needs encouragement. This is, as if just by enshrining something in law, it will be encouraged. If that was the case, marriage rates wouldn't have declined substantially since the 1950s. Even in the US, where governments actually pour money into advertising campaigns to encourage marriage (something I am

personally against because it cheapens marriage for the sake of economic purposes, by the way), there hasn't been a resurgence of marriage as a result. On the other hand, many things can be seen to be important and encouraged in society without being necessarily enshrined in law. Examples include religious belief, being compassionate towards the less fortunate, eating healthily, making LGBT young people feel accepted and included, and so on.

Finally, many people are concerned that if the clearly understood gold standard of civil marriage is withdrawn in the near future and replaced with civil unions and contracts that are not as well understood, it will create more harm than good for many couples and families, at least in the short to medium term. The universal understanding of marriage is indeed one of the reasons why many people believe it must be extended to gay couples, and why the provision of civil unions instead is not only

theoretically but actually practically unequal. Even though I strongly support marriage privatization, I cannot in good conscience ignore the reality of this concern. Therefore, in my proposal that will be described in this book, civil marriage is actually preserved, despite the creation of a private marriage system around it. Perhaps one day civil marriage will not be needed at all, but we are still far off from there, and even the best ideals need to be delivered practically in a way that does not cause harm. In the following chapters, I will demonstrate how we can create a system with all the benefits and goals of marriage privatization, while actually not needing to abolish civil marriage itself.

Chapter 5

A Path Forward

While interest in marriage privatization has increased in recent years, all the talk has remained theoretical. Nobody seems to have a clear path towards achieving marriage privatization. It's not just that legal reform isn't coming yet in the near future, it's that there's no clear way to even work towards it. On the other hand, the idea has been sadly hijacked by those against marriage equality to provide the semblance of another option in an attempt to stall reform, discrediting the idea in the eyes of many. If we are to save the future of marriage privatization as a viable idea, we need to act soon to find a path forward.

Many libertarians believe that the path towards marriage privatization will be as simple as introducing a bill into parliament or congress to

abolish the legal definition of marriage and convert all marriages into civil unions. In fact, such bills have been introduced into some US state legislatures, with no appreciable result. Like many other things libertarian, those behind the idea clearly have no practical strategy to bring about its fruition. The truth is (and it is a truth libertarians often ignore) people like the status quo because it is familiar. The reason why marriage equality has been so much more successful than marriage privatization is because the former simply does not change the status quo for the 98% of people who are heterosexual, and the latter, at least under the currently proposed models, forcibly changes the status quo for everyone, including even already married couples. In the real world, even changing the legal name of 'marriage' to 'civil union' for already married couples is just too much, at least in our present society. There are also practical problems to be resolved, like the international recognition of civil unions and private contracts under the new system. Clearly

if we are to have change, it must be gradual, and it must let people keep using systems available under the status quo for as long as possible. Otherwise, marriage privatization will just forever be in the too hard basket, like many other libertarian ideas.

Furthermore, the change must be cultural as much as political. The acceptability of laws and legal systems actually depends on the culture of society to a great extent. For example, many people in the developing world cannot properly appreciate the liberal governance systems of the West, because they expect their government to be a paternal figure looking after everything in society. Perhaps they even expect the government to uphold religious norms and herald the greatness of their religion, something most Western governments are prohibited from doing. The reason why we appreciate our system of government is because we have been culturally prepared to

accept the principles of the liberal enlightenment. Therefore, the widespread acceptance of marriage privatization will require a culture where marriage is seen as a plural rather than a singular concept, and therefore inappropriate to be centrally regulated by one single set of laws. The fact is views on marriage are already plural in our present society, but there has not been a clear consensus as to agree to disagree and simply embrace this diversity as a fact of life. The benefits of a plural marriage culture have also not been discussed enough, including a much higher level of resilience to attempts at social engineering or radical cultural shifts, and the simple idea that in a free market of ideas those ideas that lead to the best outcomes will win out at the end of the day. Once we have these conversations, I believe you will find a substantial increase in the number of people actively embracing the idea that marriage should be plural.

The following chapters will outline what I believe to be the most direct path towards marriage privatization: a cultural change to a consensus of pluralism surrounding marriage, a legal change to recognise all couples committed to a shared life and to apply family law more universally, another legal change to allow an increase in scope of pre-marital contracts, and some final legal changes to formalise in law that the concept of marriage is no longer under monopoly control by the government. It is a program that does not shatter the status quo in any way, and the changes are something a substantial number of both conservatives and progressives will appreciate, if for different reasons. Even those who don't believe in the whole program of marriage privatization can be persuaded to support parts of the program, if for other reasons. Most importantly, they are changes we can start discussing right now, rather than pie-in-the-sky ideas.

Chapter 6

Step One: Creating a Plural Marriage Culture

The most important development that needs to happen before marriage can be privatized is perhaps the development of a culture where marriage is seen as a great tradition and inspiration that nevertheless can be applied in different ways in our modern society, rather than something that has to be one-size-fits-all. Think about it: if marriage is to be one-size-fits-all, then central regulation with one set of rules for everybody makes sense, but if not, then it clearly does not make sense.

As previously discussed, views on what marriage actually is are already diverse, and the pretence that marriage can or should be one-size-fits-all is just that: a pretence. The FACT that marriage is already de-facto not one-size-fits-all is why there is a marriage privatization

movement in the first place. A marriage where lifelong commitment is the central goal can be quite different from a marriage where mutual fulfilment as soul-mates is the central goal, and a religious marriage can be quite different from a secular marriage. It is both confusing and unhealthy to pretend that these marriages are all the same. Confusing, because couples may see people in other 'marriages' acting in ways that are incompatible with their view of what their own marriage should be like, and unhealthy, because the couple may then live in fear that their own marriage will become 'like that' one day too. Confusing, because when people assume that all marriages are alike they feel like they can judge all other marriages using their own standard, and unhealthy, because that would mean a society where people are constantly judging others and being judged themselves, all because they can't agree to use what standard to judge. There's also another problem with marriage being one-size-fits-all. In a culture where there is still a view

that marriage is or should be one-size-fits-all, even if some people want to start their own separate tradition of marriage, they stand open to accusation of wanting to judge others' marriages, or to change the way marriage is for everyone else. For example, if somebody were to start a 'commitment based marriage society', they may be accused of being judgemental of marriages which don't live up to their views, even if it was never their intention.

To bring about widespread realisation that marriage is already a plural concept, we really need to change the way we talk about and see marriage collectively. One concept that is useful is that idea that marriage represents one old, grand, tradition, that has inspired multiple social institutions based on its spirit over time. For example, there is the government civil marriage, and each religion also has its own marital traditions, for example Jewish marriage or Catholic marriage, each with very different

definitions. Furthermore, these concepts can overlap too, for example, a couple in a Catholic marriage is also generally going to be in a state civil marriage. Or maybe not, the most common example being where couples enter into a civil marriage via a secular ceremony, thereby without entering into any religious marriage. Another (in reverse) example is where religious couples decide to undergo a religious ceremony, but did not obtain a legal marriage licence at the same time because they are participating in a marriage boycott in the name of their LGBT friends. The recognition of marriages also differs depending on context. For example, many religions only recognise marriages that satisfy their own requirements, while governments recognise all marriages that satisfy their legal requirements but not those that do not. In jurisdictions without marriage equality, government departments generally do not recognise same-sex marriages, but private businesses often do. Remember, talking about

this kind of diversity is merely describing the status quo!

Taking this concept even further, we could propose to describe, develop and promote further 'traditions' inspired by marriage, all contributing to the free market of ideas. See the 'Eterniage' example in the Appendix for what I mean. While such 'movements' may be seen as judgemental in a one-size-fits-all context, if undertaken as part of a move towards marriage privatization, it becomes just a necessary part of bringing about the new paradigm. There is no question of 'judging' others' marriages in this context, as in the marriage privatization context, the rules and expectations of every tradition only applies to adherents of that tradition. One important thing is that new marriage inspired 'traditions' created in the marriage privatization context should clearly state that adherents of that tradition do not necessarily need to also be in a

government civil marriage (again see Eterniage for an example). There are two reasons for this. Firstly, any private marriage model is only meaningful when government approval is not necessary, otherwise there would still be a central authority as the ultimate regulator, limiting the 'independence' of the traditions from the government and from each other. Secondly, as government rules to marriage can change at any time without the couples' consent, such change would also mean a change to any tradition that is bound to it. This would in turn mean that the tradition would not have a fixed, independent meaning, and would instead depend on government regulations at least partly for their definition. This would defeat the very point of any marriage privatization reform. On the other hand, I believe such traditions should not require their adherents not to be in government marriages, because this would exclude many people for practical reasons. Instead, couples should be afforded the real

freedom to choose whether they want more 'independence' or 'convenience'.

While without further legal reforms the aforementioned changes will only be on a cultural level, even that would be quite satisfying for many couples. I believe that many couples entering marriage would like to have the terms of their marriage more clearly defined. There would also be no more of that insecurity some couples have from observing Hollywood-style mini-marriages and fearing that their marriage may be as fragile, now that we are clear about all 'marriages' being different in their very foundation and constitution. However, these cultural changes are also the prerequisites for bringing about legal reforms. When we see that couples who do not take up a government civil marriage can be just as committed (or more committed) than those who do, the case for equal recognition becomes a no brainer. When we have a

consensus that marriages are not all the same in their values and meaning, the case for allowing more flexibility in relationship contracts becomes much stronger.

Chapter 7

Step Two: Family Law Reform

One of the main benefits surrounding the idea of marriage privatization is that marriage does not have to be subjected to government approval or the rules set by the government. However, that would also mean that the government would need to have some other way of distributing the benefits currently given to married couples for the sake of family welfare, and some other way of recognising the family unit, so that the application of the presumption of paternity and spousal immunity in court can continue. The perceived difficulty in achieving this, especially in the US context, has convinced quite a few commentators that marriage privatization is simply too hard to do. Some marriage privatization supporters have said that a civil union licence should instead be

available for all couples, coming with all the rules that currently apply to marriage. Other marriage privatization supporters, however, have pointed out that would mean all couples would still need to obtain a licence from the government to have any rights, meaning that only the very few who are willing to go without can choose to be truly be independent of government intervention.

But the fact is that, the application of family law rights without marriage licences or civil union licences is actually very achievable. It already happens to a great extent in jurisdictions like Canada, Australia and New Zealand, and there have also been proposals for similar reform in the UK. Basically, any couple who has cohabited for a period of time (e.g. one year or more) or who cohabit and have had a child together will have the rights and responsibilities that a married couple have under the law. Of the aforementioned jurisdictions, they each apply

the rules of marriage to cohabiting couples to a different extent, but practically there really isn't a reason why all the rules of marriage cannot apply. For example, in Australia, repeated discussions about what rights same-sex couples are missing out on due to the lack of marriage equality have not turned up anything substantial. This has come after the Australian government took the effort to eliminate differences in rights between married and cohabiting couples in 2008.

Of course, cohabiting relationships without formal documentation can be difficult to prove in court. Therefore, couples still need to be provided with the opportunity to register for a civil union or domestic partnership if they so wish, with the benefit of certainty as a result. This way, couples will still be able to have the certainty that comes with civil marriage even if they do not wish to have a civil marriage. Again, it needs to be stressed that registration should

not be compulsory to obtain recognition in a best practice system, because it should be the government's responsibility to recognise families and treat them well accordingly, rather than the couple's responsibility to fulfil the government's requirements before they can receive fair treatment.

On the other hand, couples who do not wish to have the usual financial rules applied to them under family law, whether in a civil marriage, civil union or cohabiting without any government registration, should be able to sign a simple, standard contract to that effect. This way, they will still count as family under law regarding next of kin, presumption of paternity and spousal immunity.

There is no reason why jurisdictions like the US cannot have the aforementioned system, apart from some people's old fashioned and

judgemental belief that cohabiting couples should not receive recognition and rights. However, it can be easily demonstrated that this is simply placing traditional prejudice ahead of the responsibility to treat all families and children fairly. Couples already cohabit at substantial rates, and often have children in these relationships too. The lack of legal recognition for these families is to the detriment of children, therefore. It is essentially the same argument that has been used to support gay marriage. While being gay is not a choice and refusing civil marriage is, as a responsible society we still cannot allow the choice of adults to detrimentally affect their children's benefits. Furthermore, some couples actually opt out of marriage because they have a certain view of marriage, perhaps inspired by some form of feminism, making them uncomfortable with living under such an arrangement. Even though I strongly believe in marriage personally, I see no benefit in coercing such couples to choose marriage. Therefore,

the only just solution is to recognise all couples and families equally in law.

Chapter 8

Step Three: More Flexible Contracts

One of the key benefits to marriage privatization should be that couples can draw up their own marriage contracts in accordance to their own needs and values.

I believe that we can effectively achieve this by extending the applicable scope of pre-nuptial type contracts, currently available in most jurisdictions already. As these contracts are currently also available to cohabiting couples in jurisdictions like Australia, I envisage that this would also be the case for other jurisdictions when the reforms described in the previous chapter are legislated.

Currently, the government feels that they can legitimately limit severely the scope of pre-

nuptial contracts (or even ban them altogether in some jurisdictions) partly because marriage is one-size-fits-all, and it would not be unreasonable to limit the scope of its customization. However, when marriage has become widely understood as a plural concept, after the changes described in Chapter 6, this attitude will likely change. If marriage isn't one-size-fits-all, it logically follows that couples should be allowed more scope to customize its contract.

While I personally believe that it is not necessary to alter the rules of exit via customised contracts to emphasize commitment, I totally respect the rights of couples who want this choice. Where more flexible contracts are allowed, couples would have this choice if they wanted it. The necessity for 'covenant marriage' would also thus be eliminated.

Chapter 9

Final Steps

After the steps outlined in Chapters 6, 7 and 8 have happened, most benefits of marriage privatization will have arrived. Marriage will now be understood as a plural concept, with a variety of marriage traditions couples can choose to identify with. When marrying, couples can choose to take out a government civil marriage or civil union, or not. In addition, couples will have the choice to have a customised marriage contract, if they wish to do so. Taking any of these choices will become a normalised matter, in a society that has gotten used to the changes.

There are still a few things to do to finally achieve full marriage privatization. For example, 'marriage' in the legal sense still refers to only government civil marriages, and those

opting out of this arrangement still won't be able to legally declare that they are married, despite the fact that they actually are for all purposes culturally. A simple change of the law will fix this. Furthermore, the laws surrounding civil marriage can be amended to state that civil marriage provided by the government is only one tradition of marriage among many, and that the government respects all other traditions of marriage, whether co-existing with civil marriage or not.

Some would argue that we would still need to go further and abolish government civil marriage altogether. While this may be necessary in the view of marriage privatization purists, I do not see any harm in maintaining the availability of government civil marriage as a 'public option' in an otherwise privatized system, as long as the aforementioned steps have already been taken. As long as there will be no societal or legal pressure to take the

'public option' or agree with its specifics, there is no detrimental effect in its continued existence.

Appendix

The Eterniage Manifesto: An 'Eternal' Model of Marriage

Chapter 1 A Problem That Has The Wrong Solution

The marriage culture is falling apart. Young people are liking marriage less and less. The fact that in more than 40% of cases it is no longer 'for life' has made it less attractive for them.

Conservatives blame the availability of 'no-fault divorce', i.e. where divorce is granted after a set waiting period, without needing a reason. They have proposed, and in a few limited jurisdictions, set up the alternative of 'covenant marriage', where the grounds for divorce are restricted. But the fact that only very few couples overall choose this option where it is available mean that the vast majority, more than 90% of couples, actually prefer no-fault divorce.

The reason is simple. No matter how committed somebody is to their marriage, the horror story of the abused wife who can't get a divorce from the judge is still a very scary prospect. Since most people do not feel that they can trust the government and judges to provide adequate justice re personal relationships, the availability of no-fault divorce remains the preferred option, even for couples highly committed to marriage. Furthermore, the fact that if given the choice 90%+ of couples would still like to have the option of no-fault divorce means that, as long as divorce arrangements are concerned, no-fault is the choice with the people's mandate, and there ought to be no more complaining.

Thus complaining about no-fault divorce, which is supported by democracy and here to stay, is simply barking up the wrong tree.

Chapter 2 The Root Cause of the Problem

Facing the decline in marriage culture and commitment, conservatives have often proposed more regulation. Divorce reform to make divorce harder was quite popular, at least until they realised that it was ineffective in actually changing things. Failing to come up with any further ideas, conservatives often just hold tightly to the status quo, for example by opposing same-sex marriage.

But what if the root cause of the problem IS government regulation itself? For starters, of the many young couples who have no desire to marry, how many are simply put off by the one-size-fits-all government mandated financial regime? Why is it that only those who can abide by the government's financial rules are deemed to be able to embrace the 'spirit of marriage'?

Furthermore, in modern times, civil marriage is a status that is 'granted' by the government. Therefore, this implicitly implies that the government is the only legitimate authority in dealing with civil marriages, and the rules for exit are the rules set up by the government. Given that most of the Western world now have no fault divorce and there appears to be no other acceptable alternative, this implies that civil marriage can be rightfully exited from as long as one does so according to the government's rules, which is usually only a period of separation of between three to twelve months. Anything else is only 'decorative', just like the wedding cake. Since we have had this situation for four decades now, you really cannot blame or judge married couples for not necessarily thinking that marriage doesn't have to be 'for life'.

In short, since governments cannot use legislation to make the promise of 'for life'

effective without also creating unjust situations sometimes, there is no alternative but to just have a situation where civil marriage is supposed to be 'for life' but in reality can be righteously dissolved, no questions asked as long as the waiting period is over. The inability of governments to effectively enforce human promises 'justly' is a given, and cannot be fixed satisfactorily. The end result, invariably, is the effective downgrading of the marriage ideal from 'for life' to 'until I decide otherwise'. Again, I must stress that nobody can judge couples who see marriage the way it has already become practically in the past four decades, rather than the traditional way.

Also remember, I must stress again, that there is no prospect of a satisfactory alternative to 'no-fault divorce'.

But for those of us who still want to hold onto marriage 'for life', what is the solution? Enter Eterniage.

Chapter 3 The Eterniage Idea

The word 'eterniage' is derived from 'eternal' and 'marriage', and 'eterniage' is the solution for encouraging lifelong marriages that I support. Let me explain.

The word 'eterniage' has several meanings. Firstly, it just means that marriage is meant to be eternal. Whilst not all marriages turn out that way, as there are unfortunately abusive situations people have to escape from, eternity is the ideal marriages generally start with, and couples should be reminded to work hard at this ideal at all times. Secondly, it reminds us that marriage has been in existence for the eternity of human culture, and its core value of commitment for life is also eternal, regardless of political action. Marriage, as it originally stood, doesn't require government validation; governments merely 'recognised' marriages,

including many 'common-law marriages', once upon a time before they decided to use it as a tool for social control. Marriage as it originally stood is also not affected by changes to political circumstances. For example, no fault divorce, originally a good policy to help women escape abusive husbands, may have made divorce easier for the rest of society too as a side effect, but this should have no effect at all on couples committed to the 'eterniagne' ideal.

(I am however not suggesting that this necessarily means that marriage should be between a man and a woman, as this historical definition was due to the homophobic culture of society. In modern times, it is totally legitimate to embrace the more equal definition, whilst striving to keep the core meaning of marriage otherwise. This definition should be a matter of individual conscience.)

An 'eterniage' is simply any marriage (or partnership, as the ideal still stands where there is no legal marriage, for example due to financial considerations) that lives up to the aforementioned ideal. Couples can conscientiously declare that they intend their marriage to be an 'eterniage', but they don't have to do that to be already living in an 'eterniage'.

Upholding the 'eterniage' ideal will encourage more lifelong marriages, I believe, as a result of cultural encouragement for couples to work hard at it. The arrangement of 'eterniage' also mirrors the way marriage has traditionally been: a promise that two people consciously make for each other, rather than a promise made under the government, under government rules, to satisfy government requirements. This means that, while the 'insurance' of no-fault divorce is still available, there is a cultural expectation that the couple

works hard to make sure the marriage stays intact unless there are unfortunate circumstances.

Chapter 4 Eterniage and Government Marriage

What is the relationship between eterniages and government civil marriages? The answer is that one is a cultural thing, the other is a legal status, and the two are separate, despite having the same origin in history. It's like a minister of religion vs a minister of government.

Can the two co-exist? Absolutely, and I expect this to be the case usually. Churches generally require a marriage licence to perform a religious marriage, so couples in religious marriages will also be in legal marriages, generally speaking, eterniage or not. Furthermore, many other couples would opt for civil marriage and all the rights and responsibilities it entails, while also living the eterniage ideal.

Can one exist without another? Absolutely. Not everyone in a legal marriage identifies with the eterniage ideal anymore nowadays. On the other hand, living the eterniage ideal is about a promise two people make to each other, and a legal marriage certificate is not necessary for that.

Conservatives may not like the fact that eterniages can exist without legal marriages. But that's simply the truth, as the requirements for an eterniage, a promise mutually made by two people, do not require a marriage certificate to be valid. Here are some more reasons why eterniage is stronger this way:

- 1) The concept of eterniage should be as simple and uncomplicated as possible. Confusion makes cultural concepts weak.

2) Furthermore, when eterniage relies on government marriage, the integrity of the eterniage ideal itself is compromised.

Remember, eterniage is not a new invention, but based on the age-old tradition, of which the government is not a necessary party. If eterniage is instead constructed as depending on the existence of a marriage certificate too, it would be incompatible with the idea that it embodies the age-old spirit of marriage promises.

3) To make eterniage as effective and inclusive of all couples as possible, further artificial restrictions should not be added. Couples who refuse to believe that their marriage can be 'granted' by the state should not be excluded from eterniage. They weren't excluded from marriages in ancient times either. Given that a substantial portion of young people already

reject legal marriage, artificially saying that eterniage cannot exist without legal marriage is not only without ground, it is stupidly exclusive.

4) Also, if eterniage was co-dependent on civil marriage, the 'rules' of civil marriage exit as discussed in Chapter 2 would also apply to eterniage. Eterniage itself, as one concept, would thus have two sets of exit rules, making the concept vulnerable to muddying over time and generations, especially if there are further changes to the exit rules for civil marriage. As it stands, when couples undertake both eterniage and civil marriage, they clearly understand that these are two separate things, one cultural and the other legal, and they of course have two separate sets of exit rules, one to be enforced by culture, the other to be enforced by the law.

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engineer a conservative, progressive or radical society.

With the great confusion surrounding what liberalism is nowadays, and the lack of a firm and clear meaning of what this ideology is among the general public, it is unsurprising that liberalism, even with its great cannon including many great statements and thinkers going all the way back to Mills and Locke, is not exactly the most appealing idea to today's young intellectuals. And yet, this is a sad situation, one that does not bode well for our future.

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